

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
2013 JAN -7 PM 4:18
S.D. OF N.Y.M.E.

AHRON BRAUN

Plaintiff

vs.

RESURGENT CAPITAL
SERVICES, LP

Defendant

Case Number:

CIVIL COMPLAINT

JURY TRIAL DEMANDED

13 CV 00128

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff, Ahron Braun, by and through his undersigned counsel, Bruce K. Warren, Esquire of Warren Law Group, P.C., complaining of Defendant, and respectfully avers as follows:

I. INTRODUCTORY STATEMENT

1. Plaintiff, Ahron Braun, is an adult natural person and brings this action for actual and statutory damages and other relief against Defendant for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices, as well as violations of the New York General Business Law §349.

II. JURISDICTION

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337.

3. Venue in this District is proper in that Plaintiff resides in this district.

III. PARTIES

4. Plaintiff, Ahron Braun, (hereafter, Plaintiff) is an adult natural person residing in Monroe, New York. At all times material and relevant hereto, Plaintiff is a “consumer” as defined by the FDCPA, 15 U.S.C. § 1692a (2).

5. Defendant, Resurgent Capital Services, L.P., (hereafter, Defendant), at all times relevant hereto, is and was a corporation engaged in the business of collecting debt within the State of New York and the State of South Carolina, with a primary location at 15 South Main Street, Ste. 600, Greenville, SC 29601.

6. Defendant is engaged in the collection of debts from consumers using the telephone and mail. Defendant, is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).

IV. FACTUAL ALLEGATIONS

7. On or about August 3, 2012, Plaintiff received an initial notice from the Defendant on a consumer debt allegedly owed on a delinquent HSBC account. **See “EXHIBIT A” (notice) attached hereto.**

8. Plaintiff was said to owe a consumer debt of approximately \$1,469.87.

9. Defendant list LVNV Funding, LLC, as the current creditor on this alleged account.

10. In this same notice, Defendant notifies Plaintiff that he has 30 days to dispute this said consumer debt.

11. Defendant states that if Plaintiff calls 866-464-1187 they could arrange a payoff, but goes on to warn the Plaintiff that the balance stated on the letter is not the actual balance due.

12. On or about August 22, 2012, Plaintiff sent a certified letter to Defendant on said account disputing the alleged consumer debt. See **“EXHIBIT B” (notice) attached hereto.**

13. In his letter Plaintiff asks for validation of the alleged consumer debt as well as disputing this debt.

14. Defendant never sent validation of the alleged consumer debt to Plaintiff.

15. However, on or about November 12, 2012, Plaintiff received another letter from Defendant acknowledging an “inquiry” of the alleged consumer debt, but insisted upon payment without providing validation. See **“EXHIBIT C” (notice) attached hereto.**

16. Defendant knew that Plaintiff was disputing this alleged consumer debt and sent the second letter prior to verification.

17. The Defendant acted in a false, deceptive, misleading and unfair manner when they engaged in conduct the natural consequences of which is to harass, oppress, or abuse such person in connection with the collection of a debt, especially that of one belonging to another.

18. The Defendant knew or should have known that their actions violated the FDCPA. Additionally, Defendant could have taken the steps necessary to bring their and their agent’s actions within compliance of the FDCPA, but neglected to do so and failed to adequately review those actions to insure compliance with the law.

19. At all times pertinent hereto, Defendant was acting by and through their agents, servants and/or employees, who were acting with the scope and course of their employment and under the direct supervision and control of Defendant herein.

20. At all times pertinent hereto, the conduct of Defendant, as well as their agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and in wanton disregard for federal and state law and the rights of the Plaintiff herein.

21. As a result of Defendant's, conduct, Plaintiff has sustained actual damages, including, but not limited to, injury to Plaintiff's reputation, invasion of privacy, damage to Plaintiff's credit, out-of-pocket expenses, physical, emotional and mental pain and anguish and pecuniary loss and she will continue to suffer same for an indefinite time in the future, all to her great detriment and loss.

COUNT I – FDCPA

22. The above paragraphs are hereby incorporated herein by reference.

23. At all times relevant hereto, Defendant was attempting to collect an alleged consumer debt which was incurred by Plaintiff for personal, family or household purposes and is a "debt" as defined by 15 U.S.C. § 1692a(5).

24. The foregoing acts and omissions constitute violations of the FDCPA, including but not limited to, violations of:

- | | |
|---------------|--|
| §§ 1692b(2): | Contact of Third Party: Stated that the consumer owes any debt |
| §§ 1692d: | Any conduct the natural consequence of which is to harass, oppress, or abuse any person |
| §§ 1692e: | Any other false, deceptive, or misleading representation or means in connection with the debt collection |
| §§ 1692e(10): | Any false representation or deceptive means to collect a debt or obtain information about a consumer |

§§ 1692f: Any unfair or unconscionable means to collect or attempt to collect the alleged debt

§§ 1692g(b): Collector must cease collection efforts until debt is validated

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant, for the following:

- a. Actual damages;
- b. Statutory damages pursuant to 15 U.S.C. § 1692k;
- c. Reasonable attorney's fees and litigation expenses, plus costs of suit; and
- d. Such additional and further relief as may be appropriate or that the interests of justice require.

COUNT II

Violations of New York General Business Law §349

25. Plaintiff hereby restates realleges and incorporates herein by reference all foregoing paragraphs as if set forth fully in this count.

26. Under New York General Business Law §349, deceptive acts or practices in the conduct of any business conducted in the State of New York are unlawful.

27. GBL §349 provides in relevant part as follows:

- (a) Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishings of any service in this state are hereby declared unlawful
- (g) This section shall apply to all deceptive acts or practices declared to be unlawful, whether or not subject to any other law of this state, and shall

not supersede, amend or repeal any other law of this state under which the attorney general is authorized to take any action or conduct inquiry

- (h) In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover their actual damages or fifty (\$50) dollars whichever is greater, or both such actions. The court may, in discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing Plaintiff.

28. As a direct and proximate result of Defendant's deceptive acts and practices, committed in violation of GBL §349, Plaintiff was damaged in that she, among other things, suffered stress and anxiety as a result of the practices and actions of the Defendant.

WHEREFORE Plaintiff prays this Honorable Court enter judgment in their favor and against Defendant, and Order the following relief:

- a. Actual damages
- b. Statutory damages
- c. An award of reasonable attorney's fees and expenses and cost of suit; and
- d. Such additional relief as is deemed just and proper, or that the interest of justice may require.

III. JURY DEMAND

Plaintiff hereby demands a jury trial as to all issues herein.

Respectfully submitted,

WARREN LAW GROUP, P.C.

Date: December 7, 2012

BY: 
Bruce K. Warren, Esquire

Warren Law Group, PC
58 Euclid Street
Woodbury, NJ 08096
P: (856)848-4572
F: (856)324-9081
Attorney for Plaintiff

EXHIBIT "A"

15 S. MAIN ST., SUITE 600
GREENVILLE, SC 29601



364396488

RESURGENT
Capital Services

Toll Free Phone: 1-888-665-0374
Toll Free Fax: 1-866-467-0163

<http://www.resurgent.com/>

Hours of Operation
8AM-7PM EST Monday - Thursday
8AM-5PM EST Friday

Previous Creditor: HSBC
Current Owner: LVNV Funding LLC
Account Number: [REDACTED]
Balance: \$1,469.87

August 3, 2012

VAL-CS-1

*B-01-MU7-AM-03104-11



*****SINGLP

AHRON BRAUN



Dear Ahron Braun:

This account has been placed with Resurgent Capital Services L.P.

If we can be of further assistance, please contact one of our Customer Service Representatives toll-free at 1-888-665-0374.

Si usted no entiende el contenido de esta carta o tiene mas preguntas, por favor contacte a uno de nuestros representantes que hablan español al numero 1-888-665-0374.

For your convenience, you may submit your payment online at www.rcspay.com.

You may also send your payment to the address listed below:

Resurgent Capital Services L.P.
PO Box 10466
Greenville, SC 29603

Should you desire to pay off the account in full, you should contact us at 1-888-665-0374 to determine the payoff balance as interest, payments, credits, fees, and/or other permissible charges can continue to cause the account balance referenced above to vary from day to day.

Sincerely,

Customer Service Department
Resurgent Capital Services L.P.

This communication is sent to you by Resurgent Capital Services L.P., a professional debt collector.

INFORMATION REGARDING YOUR LEGAL RIGHTS

Unless you notify us within 30 days after receiving this notice that you dispute the validity of this debt, or any portion of it, we will assume this debt is valid. If you notify us in writing within 30 days after receiving this notice that you dispute the validity of this debt, or any portion of it, we will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of us in writing, within 30 days after receiving this notice, we will provide you with the name and address of the original creditor, if different from the current creditor.

This is an attempt to collect a debt and any information obtained will be used for that purpose. This communication is from a debt collector.

The following is a Spanish translation of the information previously provided.

Lea por favor las siguientes avisos importantes que puedan afectar sus derechos.

A menos que usted nos notifique dentro de los 30 días después de recibir este aviso que usted cuestiona la validez de esta deuda, o cualquier porción de la misma, asumiremos que esta deuda es válida. Si usted nos notifica por escrito dentro de los 30 días después de recibir este aviso que cuestiona la validez de esta deuda, o cualquier porción de la misma, obtendremos la verificación de la deuda u obtendremos la copia de la sentencia y le enviaremos la copia de dicha sentencia o verificación. Si nos lo pide por escrito, dentro de los 30 días después de recibir este aviso, le facilitaremos el nombre y la dirección del acreedor original, si no coincide con el acreedor actual.

El objeto de la presente notificación es gestionar el cobro de la deuda, y toda información obtenida será utilizada a tal fin. La presente comunicación proviene de un agente de cobro de deudas.

EXHIBIT “B”

August 22, 2012

From:
Ahron Braun
[REDACTED]
[REDACTED]

To:
RESURGENT CAPITAL SERVICES L.P.
15 S. Main Street, Suite 600
Greenville, SC 29601

RE: Account # [REDACTED]

Dear Customer Service Department,

This letter is lawful notification to RESURGENT CAPITAL SERVICES L.P. as the first step of due process of law pursuant to the Bill of Rights and the Federal Constitution, in particular Articles I, IV, V, VII, and IX of the Amendments,. Please take Notice that Ahron Braun CONDITIONALLY ACCEPTS YOUR CLAIM UPON BONA FIDE PROOF that your claim is lawful and valid.

Please take lawful notice that in order to effect this BONA FIDE PROOF, RESURGENT CAPITAL SERVICES L.P. via a legally authorized representative is lawfully required and hereby demanded to respond point by point in Truth, Fact, and Evidence to each and every item set forth in this correspondence pursuant to the Fair Credit Reporting Act 15 U.S.C. §1681, before Ahron Braun can make an offer to settle with RESURGENT CAPITAL SERVICES L.P.'s alleged claim in this matter.

Please provide the following:

1. A copy of the contract that binds myself, a Natural Person, and RESURGENT CAPITAL SERVICES L.P., a creature of the State who is defined as an ARTIFICIAL PERSON.
2. PROOF OF CLAIM via certified, notarized, specific, and relevant documents that RESURGENT CAPITAL SERVICES L.P.:
 - a. Has any contract or agreement which lawfully compels this Natural Person to accept and/or respond to any communications from RESURGENT CAPITAL SERVICES L.P.
 - b. Is a lawful and valid party in interest in this matter.
 - c. Is not an unrelated third party.
 - d. Is not an unrelated third party debt collector.
 - e. Did not purchase this alleged debt for an agreed upon cost from an alleged other COMPANY, CORPORATION, or Party.
 - f. Is not acting on its own behalf and/or interests in this instant matter.
 - g. When did you get my permission to obtain my consumer credit report.

Please have your legally authorized representative respond via signed affidavit, under penalty of perjury, and enclose copies of all relevant documents that demonstrate BONA FIDE PROOF OF YOUR CLAIM within 10 days of receipt of this letter, via certified mail.

This is not a request for "verification" or proof of my mailing address, but a request for VALIDATION made pursuant to the above named Title and Section.

If your offices fail to respond to this validation request within 10 days from the date of your receipt, all references to this account must be deleted and completely removed from all of my 3 consumer credit report files Experian, Trans Union, Equifax, and a copy of such deletion request shall be sent to me immediately.

Failure to provide a lawfully valid response, as stipulated, this would be in agreement that RESURGENT CAPITAL SERVICES L.P. and their representatives have no BONA FIDE PROOF OF CLAIM in this instant matter which is your lawful, legal and binding agreement with and admission to this fact as true, correct, legal, lawful and binding upon you, in any court, anywhere in America, without your protest or objection or that of those who represent you. Your silence is your acquiescence.

Dated: August 22, 2012

All Rights Reserved,
Respectfully submitted,

By: _____

Ahron Braun, American Citizen
Authorized Representative

[REDACTED]
[REDACTED]

Sent by Certified Mail # 7011 2970 0003 5227 7395

U.S. Postal Service TM		
CERTIFIED MAILTM RECEIPT		
(Domestic Mail Only; No Insurance Coverage Provided)		
For delivery information visit our website at www.usps.com		
GREENVILLE SC 29601 SPECIAL USE		
Postage	\$ 1.10	0063
Certified Fee	\$2.95	10
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 4.05	08/23/2012
Sent To		
Street, Apt. No., or PO Box No.		
City, State, ZIP+4		
GREENVILLE SC 29601		
PS Form 3800, August 2006 See Reverse for Instructions		

EXHIBIT "C"

15 S. MAIN ST., SUITE 600
GREENVILLE, SC 29601



364396488

RESURGENT
Capital Services

Toll Free Phone: 1-866-464-1187

Toll Free Fax: 1-866-467-0960

<http://www.resurgent.com/>

Hours of Operation

8AM-7PM EST Monday - Thursday

8AM-5PM EST Friday

Original Creditor: HSBC Bank Nevada, N.A.

Current Owner: LVNV Funding LLC

Account Number: [REDACTED]

Balance: \$1,492.81

November 12, 2012

ARINV-CS-1

*B-01-C45-AM-02876-10



*****SNOLP

AHRON BRAUN



Dear Ahron Braun:

Resurgent Capital Services L.P. ("Resurgent"), one of its servicing agencies, or one of the three major consumer reporting agencies has received an inquiry on this account.

Should you desire to pay off the account in full, you should contact us at 1-866-464-1187 to determine the payoff balance as interest, payments, credits, fees, and/or other permissible charges can continue to cause the account balance referenced above to vary from day to day.

If you have any questions, please contact one of our Customer Service Representatives toll-free at 1-866-464-1187.

Sincerely,

Customer Service Department
Resurgent Capital Services L.P.

This communication is sent to you by Resurgent Capital Services L.P., a professional debt collector.

Please read the following important notices as they may affect your rights.